APPENDIX

Internal Revenue Code:

SEC. 811. GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

(a) *Decedent's Interest.*—To the extent of the interest therein of the decedent at the time of his death;

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(c) *Transfers in Contemplation of, or Taking Effect at Death.*—To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Any transfer of a material part of

his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such consideration, shall unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this subchapter.

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(g) *Proceeds of Life Insurance.*—To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over $40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life. (26 U. S. C. Sec. 811.)

Treasury Regulations 105, promulgated under the estate tax provisions of the Internal Revenue Code:

SEC. 81.15. *Transfers during life.*—The following classes of transfers made by the decedent prior to his death, whether in trust or otherwise, if not constituting bona fide sales for an adequate and full consideration in money or money's worth, are subject to the tax: (1) transfers in contemplation of death (see section 81.16); (2) transfers conditioned upon the decedent's death (see section 81.17); * * * (4) transfers under which the decedent retained the right, either alone or in conjunction with another person or persons, to designate who should possess or enjoy the property or the income therefrom (see section 81.19); and (5) transfers under which the enjoyment of the transferred property was subject at decedent's death to a change through

the exercise, either by the decedent alone or in conjunction with another person or persons, of a power to alter, amend, revoke, or terminate, or where such a power was relinquished in contemplation of decedent's death (see sections 81.20 and 81.21).

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SEC. 81.17. *Transfers conditioned upon survivorship.*—The statutory phrase, "a transfer * * * intended to take effect in possession or enjoyment at or after his death," includes a transfer by the decedent prior to his death (other than a bona fide sale for an adequate and full consideration in money or money's worth) whereby and to the extent that the beneficial title to the property transferred (if the transfer was in trust), or the legal title thereto (if the transfer was otherwise than in trust), is not to pass from the decedent to the donee unless the decedent dies before the donee or another person, or its passing is otherwise conditioned upon decedent's death; or, if title passed to the donee, it is to be defeated and the property is to revert to the decedent as his own should be survive the donee or another person, or the reverting of the property to the decedent is conditioned upon some other contingency terminable by his death. In such instances, it is immaterial whether the decedent's interest arose by implication of law or by the express terms of the instrument of transfer. Since in such transfers the decedent's death is requisite to a termination of his interest in the property, it is unimportant whether his interest be denominated a reversion or a possibility of reverter, and whether the in-

terest of the donee be contingent or vested subject to be divested, and the tax will apply, unless otherwise provided in the next succeeding paragraph, * * *

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SEC. 81.19. *Transfers with right retained to designate who shall possess or enjoy.*—The Internal Revenue Code (section 811 (c)) provides that, except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the gross estate shall embrace all property transferred by the decedent, whether in trust or otherwise, if there is retained by or reserved to him for his life, or for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period, or for a period not ascertainable without reference to his death, the right either alone or in conjunction with any other person or persons to designate the person or persons who shall possess or enjoy the transferred property, or the income thereof. * * *

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SEC. 81.20. *Transfers with power to change the enjoyment.*—(a) *Transfers included.*—Subsection (d) of section 811 embraces a transfer by trust or otherwise (if not amounting to a bona fide sale for an adequate and full consideration in money or money's worth) when at the time of decedent's death the enjoyment of the transferred property, or some part thereof or interest therein, was subject to any change through a power exercisable either by the decedent alone, or by him in conjunction

with some other person or persons, to alter, or amend, or revoke, or terminate.

(See section 811.15.)

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(3) If the transfer was made after June 22, 1936 (the date of the enactment of the Revenue Act of 1936), and the power was either reserved at the time of the transfer or later created or conferred, without regard to the source from which the power was acquired, and whether exercisable by the decedent alone or in conjunction with a person or persons either having or not having a substantial adverse interest or interests in the transferred property, or in conjunction with persons one or more of whom had and one or more of whom had not such an adverse interest.

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